

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

SPECIAL COUNSEL,  
Petitioner,

v.

DEPARTMENT OF TRANSPORTATION,  
Agency.

DOCKET NUMBER  
CB1208930048-U-4

DATE: DEC 28 1993

Peter J. Constantine, Esquire, Washington, D.C.,  
for the Special Counsel.

John K. Kraybill, Esquire, Washington, D.C., for the  
agency.

BEFORE

Ben L. Erdreich, Chairman  
Jessica L. Parks, Vice Chairman  
Antonio C. Amador, Member

OPINION AND ORDER

This case is before the Board on the second request of the Office of Special Counsel (OSC) for an extension of a stay of the reassignment of Timothy Armstrong for 90 days. The OSC states that it has expanded its investigation to include a proposed removal and related actions (denial of within-grade increase, being placed on a performance improvement plan and receiving a written reprimand). OSC also notes that its investigation has been delayed because it complied with the agency's

request to postpone the interviewing of witnesses while two agency motions were pending before the Board and because of the difficulty inherent in scheduling investigatory interviews during the holiday season.

The agency raises essentially the same objections submitted in opposition to OSC's second request for an extension. *Special Counsel v. Department of Transportation*, MSPB Docket No. CB1208930048-U-3, Tabs 2 and 3. It has produced no evidence to cause the Board to revise its holding on these issues.

"The Board may extend the period of any stay . . . for any period which the Board considers appropriate." 5 U.S.C. § 1214(b)(1)(B). *Special Counsel v. Federal Emergency Management Agency*, 44 M.S.P.R. 544, 546 (1990). The evidentiary record in this matter is changed; the first extension period involved only a reassignment, but now OSC's investigation has been expanded to a proposed removal and the related actions. In view of the expanded investigation in this case and the difficulty inherent in scheduling investigatory interviews during the holiday season, we find that the request for a 90-day extension is reasonable. Accordingly, a 90-day extension of the stay pursuant to 5 U.S.C. § 1214(b)(1)(B) is hereby GRANTED. It is further ORDERED that:

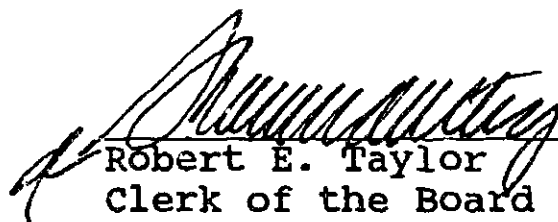
(1) The terms and conditions of the stay issued on November 12, 1993, are extended to and including March 28, 1994;

(2) Within 5 working days of this Order, the agency shall submit a verified report to the Board explaining the facts and circumstances surrounding compliance with this Order;

(3) The Special Counsel shall file with the Board, and serve on the agency any additional information and arguments that she wishes the Board to consider for further extension of the stay on or before March 8, 1994; and

(4) Any comments on such a request for further extension that the agency wishes the Board to consider must be received by the Clerk of the Board and served on the Special Counsel on or before March 14, 1994.

FOR THE BOARD:



Robert E. Taylor  
Clerk of the Board

Washington, D.C.